IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3587 of 2004

KALPANA BOHRA
V/S
JAI NARAYAN VYAS UNIVERSITY, & ANR.

Mr. PANKAJ GUPTA, for the appellant / petitioner

Mr. DC SHARMA, for the respondent

Date of Order : 20.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By this petition, the petitioner seeks direction to consider the candidature of the petitioner in third counseling dated 25.8.2004, and to declare illegal the action of the respondents, in not calling the petitioner for the counseling in third list.

The facts giving rise to the petition, as disclosed in the writ petition are, that the petitioner passed her Pre-Teacher Education Test, 2004 vide Annex.1, and she was called for counseling vide Annex.2 scheduled to be held on 10.7.2004 at 1.00 PM. It is alleged in the writ petition that petitioner met with an accident on 9.7.2004, and was medically advised to take bed rest. Then it is alleged that petitioner moved a representation to the respondent no.2, and made a request to refix the date of counseling, as the petitioner could not approach for counseling due to sudden accident. A copy of representation has been produced as Annex.4. Then, further representation is said to have been made on 22.7.04, being Annex.5. According to the petitioner, the respondents have published third list on 13.8.2004 wherein the petitioner's name did not find place, which counseling is scheduled to be held on 25th and 26th August, 2004. It is also alleged in the writ

petition that action of the respondents for not calling her for counseling, inspite of the fact that petitioner had met with an accident, is illegal, arbitrary and unconstitutional, and is violative of Articles 14 and 16 of the Constitution of India, so also Art. 21. Though in the writ petition, various grounds have been raised to challenge the action of the respondents, but main ground is that petitioner has not been called, "inspite of the fact that petitioner had informed about the sudden accident of her", and had also moved another representation (Annex.5).

In reply, it is contended that petitioner has not come with clean hands, inasmuch as, the petitioner never made representation Annex.4. It was never sent to the Coordinator as pleaded in para no.6, nor was it given to the Member of the Coordination Committee, rather this is an after thought, and having subsequently been cooked up, and since, the crux of the writ petition is, that "despite having informed about the sudden accident", she has not been called next time. This basic fact, being mis-statement of fact, the petitioner is not entitled to any relief. Further plea taken by the respondents is, that the Placement Committee in its meeting dated 6.8.2004 had taken a uniform decision for filling up the vacant seats after first and second phase of counseling, and took the decision that students who could not come on account of medical grounds or otherwise, they shall not be allowed second chance of counseling. The decision is Annex.R/1 on record. In that view of the matter, it is contended that petitioner is not entitled to any relief. Then it is further pleaded that petitioner was given appropriate chance by giving notice to appear on a given date and time, but she did not appear and, therefore, she is not entitled to any relief.

A rejoinder has been filed on behalf of petitioner, mentioning

that representation Annex.4 was delivered to one Chaina Ram, a Member of Counseling Committee, by the petitioner's father, and that petitioner has already got provided the same during the counseling, therefore, it cannot be said that petitioner was not entitled to appear in the counseling. It is also contended that as per medical advise, she could not appear for counseling, and she being meritorious, her merit cannot be ignored simply on the ground that petitioner could not approach for counseling on the date already fixed for counseling. It is also pleaded that respondent no.1 has called the petitioner for counseling,and being found her eligible, she was given admission vide Annex.10 dated 25.8.2004 and since then she is studying regularly.

In further reply to the rejoinder, an affidavit of Chaina Ram has been produced on behalf of respondents, positively controverting this fact that on 10.7.04 any representation in the form of Annex.4 was received by him by post or the same was served on him in person by any person on behalf of petitioner.

During the course of arguments, it is contended by learned counsel for the petitioner that, may be, per force, the stipulation contained in Annex.2, the petitioner may have lost merit, but then that merit was lost only for that counseling, and when more seats are lying vacant on account of recognition being given to various Educational Institutions, only two alternatives were available with the respondents, being firstly, to hold fresh PTET examination by giving opportunity to all the persons, and the second alternative would be to hold fresh counseling by includuing all the candidates who passed in PTET test, 2004, obviously, including the petitioner, as the purpose of counseling is to give admission to meritorious candidates. It is also contended that decision taken by way of Annex.R/1 is wholly arbitrary and violative of Art. 14

of the Constitution. It is also contended that since vide Annex.R/4, the parents of other candidates were permitted, the petitioner is also entitled to be so permitted, and there is no justification for not permitting the petitioner, and thus petitioner has been excluded.

On the other hand, learned counsel for the respondents, strongly relied upon the affidavit of Chaina Ram, and stated that petitioner has come with false story, thus writ petition is liable to be dismissed on that ground alone. It is also contended that by virtue of stipulation contained in Annex.2, petitioner lost her merit, and therefore, when more vacancies became available on account of recognition of some Educational Institutions, lost merit could not be revived, so as to entitle the petitioner to be considered.

I have considered the submissions made by learned counsel for the parties and perused the documents, so also pleadings available on record. I have no hasitation in coming to the conclusion, after reading the affidavit of petitioner's father, so also of Chaina Ram, in conjunction with pleadings contained in para no.6 of the writ petition, its reply, and rejoinder thereto, that the theory of delivering the representation Annex.4 on 10.7.04 by the petitioner's father to Chaina Ram, cannot be at all believed, and it clearly appears to be a cooked up story to cover up the absence of petitioner on 10.7.04. I am not going into the question of reliability about absence of petitioner to be on account of sudden accident, but I am confining to the fact, that as a matter of fact, on the part of the petitioner, there was complete **"no show"** on 10.7.04. In that view of the matter, in view of stipulation contained in Annex.2, the petitioner lost her merit, the stipulation reads as under:

"यदि आप द्वारा निर्दिष्ट तिथि व स्थान पर उपस्थित होने में असमर्थ रहते हैं तो आप स्वत: अपनी वरीयता खो देंगे।"

In my view, this stipulation cannot be interpreted to be confined to losing merit for one phase of counseling, rather the petitioner lost her merit for consideration consequent upon the PTET Examination, 2004. In that view of the matter, when the petitioner has come with false story of having sent representation Annex.4 on 10.7.04, so as to impress upon the court, that inspite of sending representation, she has been deprived of admission, the petitioner is not entitled to maintain the present writ petition on this ground alone.

It may be recapitulated here that from Annex.R/3 and Annex.R/4, it has been brought to the notice of the court by the respondents, that in the cases where candidates are unable to appear in counseling, liberty was granted to the candidates' guardian to appear and the choice was received. In that view of the matter, had the petitioner's father appeared on 10.7.04, as sought to be contended, the choice would have been ascertained by Coordination Committee, even from her guardian, and admission would have been given. But as a matter of fact, she had given a complete **"no show"** , and thus she lost the merit.

Likewise, so far as violation of Arts. 14 and 16 of the Constitution, are concerned, petitioner's candidature was considered on the basis of merit, and she was called for counseling vide Annex.2 and in identical terms, all the candidates were called. In that view of the matter, the stipulation contained in Annex.2 operates. Thereafter when Coordination Committee took a decision Annex.R/1 for not calling the candidates, who did not appear in first and second phase of counseling, it cannot be said that petitioner is entitled to be called for the

counseling of third phase. Apart from above, Annex.R/1 is not under challenge before me. In any case, from the perusal of Annex.R/1, I find that it is a uniform decision taken by duly constituted committee, and do not find any arbitrariness in that decision. Thus there is no violation of Art. 14 and/or 16 of the Constitution against the petitioner.

So far as the petitioner receiving education vide Annex.10 is concerned, that is since 25.8.2004 only, and that too only by virtue of exparte ad-interim order of the court dated 24.8.2004: This short period of study of even less than a month under exparte ad-interim order of this court does not give rise to the equity, as sought to be invoked by the learned counsel for the petitioner.

In view of the above , I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

( N P GUPTA ),J.

/Srawat/